IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/02/2004

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THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.R.C.No.2108 of 2002
and
Crl.M.P.No.21618 of 2002

Kalaiselvan .. Petitioner.

-Vs-

The State,
rep. by the Inspector of Police,
Erumaipatti Police Station,
Namakkal District. .. Respondent.

For Petitioner : Mr.N.Nithiyanandam

For Respondent : Mr.V.Arul
Government Advocate

PRAYER: Revision against the order passed in Crl.M.P.No.2623 of 2002 dated 21.10.2002 in C.C.No.209 of 2002, on the file Judicial Magistrate I, Namakkal.

:O R D E R

This revision has been filed against the order passed by the Judicial Magistrate I, Namakkal in Crl.M.P.No.2623 of 2002 in C.C.No.209 of 2002, dismissing the petition to discharge the accused/petitioner of offence under Section 9-B(1)(b) of Indian Explosives Act, 1883, on the ground that the points raised by the petitioner herein could not be considered at this stage and it is only the during the course of trial, they could be gone into.

2. For the purpose of disposing of this revision, the short facts of the prosecution case, may be briefly stated as follows:
The complainant, who apparently appears to be the Investigating officer, namely Vijayaragavan, while he was on his duty on 26.12.1999 at about 06.00 a.m,at Mettupatti Check Post, within the jurisdiction of Erumaipatti Police Station, intercepted the Ambasaddor Car bearing Registration Number TCE 6699, plying in the said route, on suspicion.

On inspecting the same he found 700 Gilletines in three Polythene bags and 200 Electric Detonators to be illegally transported by A-1 to A-4, without a valid licence or permit. Thereafter, on the confession given by A-1, that the contrabands were purchased from A-5, namely the petitioner herein, he was also arrested and accordingly, a case was registered under Section 9-B(1)(b) of Indian Explosives Act, 1883 against them.

3. Therefore, a perusal of the records of prosecution case itself would reveal that not only the Inspector of Police, Erumaipatti Police Station has registered the case by himself, but he is the person, who is said to have given the report itself, i.e to say that he has made it to appear in the First Information Report that while he was keeping a watch in the check post, he found an ambassador car crossing the check post of Mettupatti Check Post. On suspicion, he intercepted and inspected the same and during the course of which he found the contrabands to be illegally transported by four persons and on the confession given by one Palaniappan (A-1 in the main case), stating that the seized contrabands were purchased only from A-5, the petitioner herein was apprehended. The above stated facts are the gist of the contents found in the First Information Report. Further, his name also finds place under the caption Informant/complainant and that apart, he is the person, who has conducted the investigation and has filed the charge sheet.

4. Now the contention of the learned counsel appearing for the petitioner is that the officer himself having given the First Information Report, he would be only over jealous in seeing that his case succeeds and therefore, such an officer, who gives the First Information Report should not conduct the investigation.

5. In support of the argument advanced above, the learned counsel would cite a decision of the Apex Court reported in Megha Singh Vs. State of Haryana (1997 SCC (Cri) 267), wherein Their Lordships have held that the Investigation by the very police officer, who lodged the complaint, held, not conducive to fair and impartial investigation.

6. In the above cited case, though it was argued that it was only a formal First Information Report to initiate the investigation, still, the Apex Court held that he being the complainant, should not have proceeded with the investigation of the case. Further, on going through the records, the Apex Court found that he was not only the complainant in the case, but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Therefore, Their Lordships in the given case have held that such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation. Similar view has already been taken by this Hon'ble Court in Singaravelu Vs. State (1985 LW (Crl) 336), Thalavoi Vs. State represented by Inspector of Police, Chernmahadevi Police Station, Cheranmahadevi (1995 (1) MWN (Cr.) and in the subsequent judgment reported in S.Chandran Vs. State, rep. by Inspector of Police, Sivakasi Town Police Station Crime No.463 of 1995, Virudhunagar District (2001-1-L.W (Crl.) 230)

7. On going through the records in this case, I find that Thiru. Vijayaragavan appears to be the first informant, as well as the person, who registered the First Information Report and examined all the witnesses under Section 161 Cr.P.c. Further, it could very well seen that he is person, who has filed the charge sheet. In such circumstances and in view of the aforesaid decisions, I hold that the investigation is illegal and consequently, the entire prosecution has to be dropped. Accordingly, the order of the trial Court is set aside and the petitioner, who was arrayed as A-5 in the above said Calendar case shall stand discharged of the offences levelled against him.
In the result, the revision is allowed.

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Index:Yes

Website:Yes

To

1. The Judicial Magistrate No.I,
Namakkal.

2. -Do- Thro' The Chief Judicial
Magistrate, Salem.

3. The Public Prosecutor, Madras.

4. The Inspector of Police,
Erumaipatti Police Station,
Namakkal District.

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